

**BVI BEARER SHARE REGIME – 2009 UPDATE**

As clients will recall, in 2003 the BVI government introduced limitations on the use of bearer shares by International Business Companies (IBCs)<sup>1</sup>. To assist companies to comply with the new requirements various transition rules were adopted. One of the main transition rules imposed higher government licence fees if, after 2007, a company continued to retain the authority in its Memorandum of Association to issue bearer shares. The higher fees would apply even if the company did not have bearer shares in issue.

In July 2007 the BVI government, in response to recommendations by Trident Trust and other members of the private sector, relieved IBCs of the need to amend their Memorandum of Association to avoid the imposition of the higher government fees.

**SUMMARY OF BEARER SHARE RULES**

1. **Right to Issue Bearer Shares** Companies incorporated in the BVI from 1 January, 2005 have the right to issue bearer shares if the authority to do so is expressly stated in their Memorandum of Association. Such companies, when authorised to issue up to 50,000 shares, are subject to an annual government licence fee of US\$1,100<sup>2</sup>. In addition, they must deposit the bearer shares with a recognised or authorised custodian.
2. **IBCs** Until 2004 most companies formed in the BVI contained provisions in their Memorandum of Association that expressly stated that they had the right to issue bearer shares. In terms of the transition rules, now repealed, it is this large group of companies that were required to change their Memorandum of Association to include a prohibition against the issuance of bearer shares in order to avoid the imposition of the higher government fees.
3. **July 2007 Changes**
  - 3.1 Any IBC, incorporated prior to 2005, which has the authority in its Memorandum of Association to issue bearer shares shall be deemed, effective 31 December 2009, to no longer have that authority.
  - 3.2 Any IBC, incorporated prior to 2005, which wishes to retain the right to issue bearer shares can do so by electing that the rule in 3.1. will not apply to it. This is done by making the appropriate filing with the BVI Registry of Corporate Affairs.
  - 3.3 The higher government fee payable by IBCs which still wish to retain the right to issue bearer shares and have made the appropriate filing, will come into effect in 2010. During 2009 these companies will continue to pay the same government licence fee that they currently pay. From 2010 onwards, these companies will be subject to the following increased licence fees:

<sup>1</sup> International Business Companies (IBCs) were those companies formed under the provisions of the International Business Companies Act, 1984. Following the enactment of the BVI Business Companies Act, 2004 all IBCs became Business Companies on January 1, 2007 and are now subject to the provisions of the new Act.

<sup>2</sup> The government fee is higher if the company is authorised to issue more than 50,000 shares.

- US\$800<sup>2</sup> if the bearer shares are held in custody by a recognised or authorised custodian in the BVI and the bearer shares have been held by that custodian for at least twelve months prior to the annual fee due date.
- US\$1,100<sup>2</sup> if the bearer shares are held in custody by a recognised or authorised custodian located outside the BVI or if the shares have been held by a recognised or authorised custodian in the BVI for less than twelve months prior to the annual fee due date.

3.4 Companies that are deemed not to have the right to issue bearer shares will continue to pay the present applicable government licence fee which is US\$350 per year in the case of companies with the authority to issue up to 50,000 shares.

#### 4. Disabled Bearer Shares

Any bearer shares not in the custody of a recognised or authorised custodian from 2010 onwards will be disabled and any subsequent transfer is void. Disabled bearer shares lose their entitlement to vote and to distributions, as well as the entitlement to share in the assets of the company on a winding up or dissolution. In addition, the BVI Registry of Corporate Affairs and the BVI Registered Agent may refuse to process requests for companies that are not in full compliance.

#### ACTIONS TO CONSIDER

1. Clients with companies formed prior to 2005, who wish to retain the right to issue bearer shares, should contact us so that we can assist the company to make the necessary election in time.
2. Some clients may still want their existing Memorandum of Association to be amended so that it contains an express prohibition against the issuance of bearer shares. This need may exist where an institution (for example, a bank) with which the company maintains a relationship requires the Memorandum of Association to include the prohibition against the issuance of bearer shares. Our standard practice for these companies is to replace the existing Memorandum and Articles of Association with a new Memorandum and Articles of Association that also includes provisions that were introduced by the BVI Business Companies Act 2004. Our fee in relation to the above is US\$300, which includes preparation of the amended Memorandum & Articles of Association together with the directors' consent actions to adopt them and filing at the Registry inclusive of the government filing fee. The charge also includes the preparation of new share certificates if the company has bearer shares in issue. Any courier charges will be charged in addition.
3. Other clients do not need to take any further action.

For more information please contact us in the BVI or through the Trident Trust office with which you work.

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